

ORAL ARGUMENT SCHEDULED FOR MARCH 5, 2024**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

Case No. 20-1187
Consolidated with Case Nos. 20-1225, 21-1104, 21-1147

BEYOND NUCLEAR, INC., *et al.*,

Petitioners,

v.

UNITED STATES NUCLEAR REGULATORY COMMISSION
and the UNITED STATES OF AMERICA,

Respondents,

HOLTEC INTERNATIONAL,

Intervenor.

**JOINT UNOPPOSED MOTION OF PETITIONERS, FEDERAL
RESPONDENTS, INTERVENOR-RESPONDENT, AND AMICUS CURIAE
NUCLEAR ENERGY INSTITUTE, INC. REGARDING ORAL
ARGUMENT**

Pursuant to Circuit Rule 34, undersigned counsel for Petitioners¹; the U.S.
Nuclear Regulatory Commission (“NRC”) and the United States (“Federal

¹ Petitioners are Don’t Waste Michigan, *et al.* (Citizens’ Environmental Coalition, Citizens for Alternatives to Chemical Contamination, Nuclear Energy Information Services, San Luis Obispo Mothers for Peace, and Nuclear Issues Study Group); Beyond Nuclear, Inc.; Sierra Club; and Fasken Land and Minerals, Ltd. and Permian Basin Land and Royalty Owners (“Fasken”).

Respondents”); Holtec International (“Intervenor-Respondent”); and amicus curiae Nuclear Energy Institute, Inc. (“NEI”) respectfully submit this joint motion regarding oral argument in this consolidated proceeding for review of orders issued by the NRC. In particular, the parties request that, at the March 5, 2024 oral argument, the Court allow sixty minutes of total argument time, with (1) thirty minutes allotted to Petitioners and (2) thirty minutes allotted to the Federal Respondents and Intervenor-Respondent, which would in turn cede a portion of their argument time to NEI. Petitioners propose to divide their requested thirty minutes of argument time as follows: ten minutes for Beyond Nuclear, ten minutes for Don’t Waste Michigan *et al.* and the Sierra Club, and ten minutes for Fasken. Federal Respondents, Intervenor-Respondent, and NEI propose to divide their requested thirty minutes as follows: fifteen minutes for Federal Respondents, ten minutes for NEI, and five minutes for Holtec.

GROUND FOR REQUESTED RELIEF

In support of this motion, the parties submit the following:

1. With the Court’s approval, Petitioners filed three separate briefs in this proceeding, raising distinct sets of legal and factual issues for three distinct parties or sets of parties.
 - a. The brief submitted by Beyond Nuclear addresses purely legal claims related to violations of the Nuclear Waste Policy Act (“NWPA”). The

brief submitted by Don't Waste Michigan *et al.* and the Sierra Club raises legal claims concerning the NWPB prohibiting the NRC's licensing and legal and factual claims under the National Environmental Policy Act ("NEPA") regarding NRC's failure to consider environmental impacts of Holtec's proposed facility for storage of spent nuclear reactor fuel. Fasken's brief addresses a different set of NRC regulation and NEPA violations, involving the failure to consider new and significant information and related environmental impacts concerning prospective mineral extraction operations at, beneath, and surrounding the proposed Holtec facility.

- b. The three briefs were prepared independently for three separate organizations or sets of organizations, with significantly divergent constituencies and interests (including separate briefs for non-profit environmental organizations and for-profit oil and gas businesses).
 - c. The briefs were prepared by three different sets of counsel.
2. Because they addressed their clients' claims in separate briefs, none of Petitioners' counsel is sufficiently familiar with the claims raised by other counsel in other briefs to be able to respond meaningfully to questions from the Court on the other briefs.

3. Each of the three briefs raises issues of sufficient complexity and detail to warrant at least a ten-minute argument. Therefore, Petitioners request a total argument time of thirty minutes for themselves – with ten minutes allocated to Beyond Nuclear, ten minutes allocated to Don't Waste Michigan *et al.* and Sierra Club, and ten minutes allocated to Fasken – and with each ten-minute oral argument delivered by a single counsel representing each respective Petitioner or group of Petitioners.
4. Federal Respondents and Intervenor-Respondent do not object to Petitioners' proposal, provided that they likewise receive thirty minutes of argument time to split. Federal Respondents and Intervenor-Respondent also propose to share their requested thirty minutes of argument time with NEI, which filed an amicus brief in support of Federal Respondents and Intervenor-Respondent.
5. NEI has expressed an interest in participating in oral argument because Petitioners are questioning the legality of all existing and future private, away-from-reactor storage facilities. As the trade association for the commercial nuclear energy industry, NEI is best positioned to address private industry's historical understanding of the relevant statutes, *cf. Christopher v. SmithKline Beecham Corp.*, 567 U.S. 142, 157-58 (2012), and the broader consequences of Petitioners' arguments for regulated parties.

6. Petitioners do not object to the proposal from Federal Respondents, Intervenor-Respondent, and NEI.

For the foregoing reasons, undersigned counsel for Petitioners, Federal Respondents, Intervenor-Respondent, and NEI respectfully request that the Court allow sixty minutes of total argument time, with (1) thirty minutes divided among Petitioners as set forth above and (2) thirty minutes divided among Federal Respondents, Intervenor-Respondent, and NEI, as set forth above.

Respectfully submitted,

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February 15, 2024

CERTIFICATE OF COMPLIANCE

1. This document complies with Federal Rule of Appellate Procedure 27(d)(2)(A) because it contains 725 words.

2. This document complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in 14-point Times New Roman font.

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